

REMARKS/ARGUMENTS

This amendment is responsive to the Final Office Action dated April 7, 2006. Applicant would like to thank the Examiner for a timely and thorough review of the above-referenced patent application. Claims 1, 2, and 7-22 were previously pending in the application. Claims 1, 2, 7, 9-14, and 16-22 are rejected and Claims 8 and 15 are objected to. Applicant has canceled Claim 17. It is respectfully submitted that, in light of the arguments below, all of the claims are now in condition for allowance.

Rejection Under 35 USC § 112, second paragraph

The Office Action rejected Claim 17 under 35 USC 112 second paragraph as being indefinite. Applicant has canceled Claim 17.

Rejections Under 35 USC § 103(a) As Being Unpatentable over the Hanson '179 Patent in view of the Dischler '934 Patent and the Castillo '526 Patent

The Office Action rejected Claims 1, 2, 7, 9, 10, 11, 16-20, and 22 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,529,179 to Hanson ("the Hanson '179 patent") in view of U.S. Patent No. 6,564,934 to Dischler ("the Dischler '934 patent") and U.S. Patent No. 6,412,526 to Castillo ("the Castillo '526 patent"). The Office Action alleges that the Hanson '179 patent in view of the Dischler '934 patent and the Castillo '526 patent discloses every element and limitation found in the claims. Applicant respectfully disagrees with these rejections as the Hanson '179 patent, the Dischler '934 patent, and the Castillo '526 patent fail to disclose every element and limitation found in the claims.

The Office Action states that the Hanson '179 patent discloses the claimed limitations "except for ... the drinking aperture being located radially outward of the membrane." Applicant agrees that the Hanson '179 patent does not disclose a drinking aperture located radially outward of a membrane. However, the Office Action fails to allege that either the Dischler '934 patent or the Castillo '526 patent discloses a drinking aperture located radially outward of the membrane.

Moreover, Applicant respectfully submits that neither the Dischler '934 patent nor the Castillo '526 patent discloses a drinking aperture located radially outward of the membrane. The Dischler '934 patent in Figure 10 discloses a cross-cut 108 positioned above a friable layer 22 so that a straw pushed through the cross-cut breaks the friable layer. Col. 8, lines 20-29 of the Dischler '934 patent. Thus, the cross-cut is not radially outward of the membrane 22. The Castillo '526 patent discloses apertures 201a, 205a covered by foil tabs 204c, 205c. Because independent Claims 1, 10, and 18 recite "wherein the drinking aperture is located radially outward of the membrane," and the Hanson '179 patent, the Dischler '934 patent, and the Castillo '526 patent all fail to disclose such a drinking aperture, Applicant respectfully submits that Claims 1, 10, and 18 are patentable over the cited references. Furthermore, Applicant respectfully submits that Claims 2, 7, and 9 that depend from Claim 1, Claims 11, 16, and 17 that depend from Claim 10, and Claims 19, 20, and 22 that depend from Claim 18 are likewise patentable over the references. Accordingly, Applicant respectfully requests that the rejections of Claims 1, 2, 7, 9, 10, 11, 16-20, and 22 be withdrawn.

Rejections Under 35 USC § 103(a) As Being Unpatentable over the Hanson '179 Patent in view of the Dischler '934 Patent and the Castillo '526 Patent and further in view of the Reidinger '860 patent

The Office Action rejected Claims 12-14 and 21 under 35 USC 103(a) as being unpatentable over the Hanson '179 patent in view of the Dischler '934 patent and the Castillo '526 patent in further view of U.S. Patent No. 6,311,860 to Reidinger et al. ("the Reidinger '860 patent"). As stated above, the Hanson '179 patent, the Dischler '934 patent, and the Castillo '526 patent all fail to disclose a drinking aperture located radially outward of the membrane as recited in Claim 10, from which Claims 12-14 depend, and in Claim 18, from which Claim 21 depends. Furthermore, the Reidinger '860 patent also fails to disclose a drinking aperture located radially outward of the membrane. For at least this reason, Applicant respectfully submits that Claims 12-14 and 21 are patentable over the Hanson '179 patent in view of the Dischler '934 patent and the Castillo '526 patent in further view of the Reidinger '860 patent.

Accordingly, Applicant respectfully requests that the rejections of Claims 12-14 and 21 be withdrawn.

Allowable Subject Matter

The Office Action objects to Claims 8 and 15 as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the indication that Claims 8 and 15 would be allowable if rewritten in independent form; however, Applicant respectfully submits that Claims 8 and 15 are allowable in their current form for at least the reasons expressed above relating to Claims 1 and 10 from which Claims 8 and 15 depend, respectively.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that all of the claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner Bui is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

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Reply to Office action of April 7, 2006

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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